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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

PATRICIA HEWLETT, Plaintiff and Appellant, v. SAN FRANCISCO DEPARTMENT OF AGING & ADULT SERVICES, Defendant and Respondent.	A153430; A153618 (San Francisco County Super. Ct. No. CGC17559067)

Plaintiff appeals from a judgment entered after orders from the trial court (1) sustaining a demurrer to the First Amended Complaint without leave to amend, and (2) denying plaintiff leave to file a Second Amended Complaint. We affirm.

BACKGROUND

On May 19, 2017, representing herself, Patricia Hewlett filed a complaint naming as defendant San Francisco Department of Aging & Adult Services (SFDAAS). Hewlett alleged that she "is the caregiver, personal assistant and friend of Henry Joseph Solorzano, who is 95 years young," and that beginning in September 2014, the SFDAAS began harassing Plaintiff and Mr. Solorzano at his San Francisco home; and "that SFDAAS has escalated its harassment to the present that includes taking, secreting, appropriating, obtaining and retaining real or personal property of Mr. Solorzano for wrongful use and with intent to defraud." The complaint represented it was alleging claims for general negligence and professional negligence, but only a general negligence form was attached.

On June 1, acting pursuant to a petition that had been filed by the San Francisco Public Guardian's Office, the Probate Court entered an order appointing San Francisco Public Guardian as the conservator of the person and estate of Henry Joseph Solorzano.[1]

On June 13, Deputy City Attorney Kelly Collins sent Hewlett a meet and confer letter stating that the complaint was subject to demurrer. Hewlett responded via telephone on June 19, indicating that she intended to file an Amended Complaint.

On June 23, a First Amended Complaint (FAC) was filed with Hewlett's name as "Objector and friend" of Solorzano. The FAC purported to be on behalf of both Hewlett and Solorzano, and purported to allege three causes of action: negligence, willful misconduct, and elder abuse. The FAC was 19 pages long, containing 103 paragraphs, whose preliminary "facts" included those from the original complaint quoted above.

As the City and County of San Francisco (City) aptly describes, 70 of the 103 paragraphs in the FAC—six through eight, thirteen, twenty through sixty-three, and sixty-six through sixty-seven—alleged facts related to Solorzano's conservator case, alleging that City officials involved with the conservatorship case harassed Solorzano, trespassed onto his property, and/or interfered with Hewlett's caregiver relationship with Solorzano. And 12 of the paragraphs—nine through twelve, fourteen through nineteen, sixty-four, and sixty five—related to Solorzano's probate case, alleging claimed facts regarding Solorzano's probate affairs, including that he disinherited his daughter and made Hewlett his sole beneficiary. The FAC also contained allegations that Solorzano was not gravely disabled and did not consent to conservatorship proceedings, and also described both his and Hewlett's claimed communication and interactions with individuals involved in the conservatorship proceedings.

On July 11, Collins sent another meet and confer letter to Hewlett, asserting that the FAC was subject to demurrer because it was too uncertain to state a claim, and because Hewlett lacked standing to bring the claims.

[1] The petition itself is not in the record.

Hewlett acknowledged receipt of the letter, and indicated she planned to file a Second Amended Complaint (SAC) by July 26. Then, on July 25 Hewlett requested a one-week extension from Collins to file a SAC, to which Collins replied she "did not object."

Following the phone call, Collins reviewed Code of Civil Procedure section 472 and discovered that leave of court was required to file a SAC, and immediately telephoned Hewlett and informed her of the statutory requirement. Collins also told her that the City would file a demurrer to the FAC, but would not object to Hewlett's request to the trial court for a one-week extension to file a SAC. The following day Collins sent a confirming e-mail to Hewlett.

On July 28, the City filed a demurrer to the FAC, set for hearing on September 6.[2]

Hewlett did not file an opposition to the demurrer, nor any papers related to a request for leave to file a SAC within one week as she promised.

Weeks later, on August 25, Hewlett filed an ex parte application for leave to file a SAC. The ex parte request was granted, with the understanding that Hewlett's ex parte papers would serve as the moving papers for a September 6 hearing on Hewlett's motion to file a proposed SAC.

And what a complaint it was. The proposed SAC was, including exhibits, 46 pages long, and contained 108 paragraphs of claimed "Facts." The SAC named Hewlett and Solorzano as plaintiffs, and sought to name as defendants Bank of America, LPL Financial, and Edgardo Moncada. The specific allegations were that Bank of America disclosed information to the San Francisco Department of Aging and Adult Services regarding Solorzano's finances, and that Edgardo Moncada at LPL Financial Services, was Solorzano's financial advisor. The proposed SAC re-alleged the claims of negligence, willful misconduct, and elder abuse and added a fourth claim, conspiracy to

[2] The demurrer indicated that SFDAAS, the named "department," was not a proper defendant because it does not have the power to sue or be sued and is not an independent public corporation. (See *Bauer v. County of Ventura* (1955) 45 Cal.2d 276, 288–289.)

interfere with the probate of Solorzano. It then set forth what it called "additional not very well pleaded causes of action," set forth in list fashion without any factual support, which list contained no fewer than 35 additional causes of action.[3] The proposed SAC then went on to list "Other Causes Of Action" that appeared to be taken from some sort of civil practice treatise listing: Business Torts and Actions, Real Estate Broker, Escrow Agent and Notary Liability, Contract Actions, Defamation and Privacy, Insurance, Employment, Intellectual Property, Animal Torts, Construction Cases, and Governmental Tort Liability. Each of these titles was followed by multiple subsections.

On August 31 the City filed Opposition to Hewlett's Motion for Leave to File a Second Amended Complaint.

The matters came on for hearing on September 6, prior to which the court had entered tentative rulings for the City on both its demurrers and Hewlett's request to file the SAC. Hewlett contested, and the court heard argument, following which the court adopted its tentative rulings. And on October 11, the court entered two orders, one sustaining the City's demurrer without leave to amend, the other denying Hewlett's leave to file a second amended complaint.[4]

On December 19 the trial court entered judgment in favor of the City, from which Hewlett filed a Notice of Appeal.

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[3] The listed causes of action included discrimination, intentional and negligent infliction of emotional distress, abuse of process, conversion, fraud, declaratory relief, equitable relief, estoppel, wrongful eviction, unlawful detainer, false arrest, false imprisonment, six "property torts," ultrahazardous activities, premises liability, assault, battery, stalking, fraud, products liability, breach of contract, breach of implied warranty of habitability, two fraudulent transfers, two civil rights violations, intentional and neglectful interference with prospective business advantage, four claims of invasion of privacy, breach of honest services, civil R.I.C.O., and wrongful hiring, supervision, retention.

[4] On December 4 Hewlett filed a notice of appeal from the order, which we numbered A153430. Hewlett had filed an earlier appeal, on September 14. That appeal was premature, and on October 16 we ordered it dismissed.

DISCUSSION

Hewlett's Appeal Has No Merit

Hewlett, who, as noted, represented herself in the trial court, continues her self-representation here. That, of course, is her right,[5] but "[a] lay person . . . who exercises the privilege of trying [her] own case must expect and receive the same treatment as if represented by an attorney—no different, no better, nor worse." (*Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.) And Hewlett cannot merely assert that error occurred; she must demonstrate it from the record on appeal. (*Jameson v. Desta* (2018) 5 Cal.5th 594. 608–609.)

Hewlett has filed a 34-page opening brief, fewer than five pages of which contain any argument attempting to demonstrate that the trial court's orders were wrong. Hewlett's brief has a 28-page "Statement of the Case," 26 pages of which are the "Summary of Material Fact," pages that essentially repeat without meaningful record reference[6] the facts in the FAC and the proposed SAC. Only the last 4 pages of Hewlett's brief has any argument, specifically three arguments Hewlett describes as follows:

"Appellant has the constitutional standing and authority to sue on behalf of herself and Henry Solorzano to redress wrongs committed by respondent in this case."

"Appellant's proposed Second Amended Complaint that appellant filed at respondent's behest is not an impermissible collateral attack in the conservatorship case."

"Appellant's Second Amended Complaint therefore states cognizable claims."

Hewlett's brief is manifestly deficient—and the trial court's orders must be affirmed.

Hewlett asserts that "standard of review for demurrer is abuse of discretion. [Citation.] [¶] The standard of review for denial for leave to file a second amended

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[5] At least in this case, which she filed in May 2017. However, by order of July 11, 2017. the San Francisco Superior Court declared Hewlett a vexatious litigant. And on March 29, 2019, Division Four of this Court entered an order to the same effect. (See A152360, A153397, 3/29/19.)

[6] Numerous of the record references are "CT 156-173."

complaint if the prerequisites for application of the mandatory provision of Cal. Code Civ. Proc. § 437, subdivision (b) exist is de novo. [Citation.]"

Hewlett has it exactly backwards, as we described in *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43: "On appeal from a dismissal after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment about whether the complaint states a cause of action as a matter of law. [Citations.]" And as to the second issue, "[w]hile the decision to sustain or overrule a demurrer is a legal ruling subject to de novo review on appeal, the granting of leave to amend involves an exercise of the trial court's discretion. [Citations.] When the trial court sustains a demurrer without leave to amend, we must also consider whether the complaint might state a cause of action if a defect could reasonably be cured by amendment. If the defect can be cured, then the judgment of dismissal must be reversed to allow the plaintiff an opportunity to do so. The plaintiff bears the burden of demonstrating a reasonable possibility to cure any defect by amendment. [Citations.]" . . . If the "plaintiff cannot show an abuse of discretion, the trial court's order sustaining the demurrer without leave to amend must be affirmed. [Citation.]"

Other rules guide us as well, some of which were collected in *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 (*Keyes*): "The fact that we examine the complaint de novo does not mean that plaintiffs need only tender the complaint and hope we can discern a cause of action. It is plaintiff[']s burden to show either that the demurrer was sustained erroneously or that the trial court's denial of leave to amend was an abuse of discretion. [Citations.]"

As *Keyes* also observed, "the trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited." (*Keyes*, *supra*, 189 Cal.App.4th at p. 655.) In short, our review is "limited to issues that are adequately raised and supported in [Hewlett's] brief." (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451,

466, fn. 6; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2017) ¶ 8:17.2, p. 8-7.)

With these principles in mind, as well as the principle that Hewlett has the burden to affirmatively show error by the trial court, we easily conclude that Hewlett's three brief—and conclusory—arguments have no merit.

As the trial court aptly noted, Hewlett's FAC and proposed SAC failed to set forth facts supporting any cause of action on her own behalf, only facts that related to Solorzano. As the trial court also noted, Hewlett lacked standing to pursue any claims on Solorzano's behalf. Moreover, at the time of the FAC, Solorzano was under conservatorship. And not only was Hewlett not Solorzano's guardian ad litem, the order in the conservatorship case specifically suspended any durable power of attorney that Hewlett possibly had, allowing the conservator authority to control Solorzano's contact and visitation with Hewlett. In short, pursuant to California Code of Civil Procedure section 372[7], Hewlett could not bring the claims on Solorzano's behalf. And Solorzano could not bring them himself.

The trial court order also noted, and accurately, that to the extent the FAC alleged that any actions taken in connection with Solorzano's conservatorship case were improper, such allegations were impermissible collateral attack on the orders in the conservatorship case. (See *Estate of Buck* (1994) 29 Cal.App.4th 1846, 1854 ["A litigant may collaterally attack a final judgment for lack of personal or subject matter jurisdiction, or for granting relief that the court had no power to grant, but may not collaterally attack a final judgment for nonjurisdictional errors"].) To the extent the FAC alleged improper actions in connection with Solorzano's conservatorship case—an issue we do not

[7] California Code of Civil Procedure section 372 provides: "a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case."

decide—it was an impermissible collateral attack because it failed to identify any jurisdictional errors.

As noted, Hewlett makes only three brief arguments here, only the first of which is apparently directed to the demurrer sustained as to the FAC. That argument is that Hewlett has "constitutional standing and authority to sue on behalf of herself and . . . Solorzano." This argument has three subparts, only one of which, sub-argument "A." is directed to the argument.[8] This is it:

"A. Appellant has standing.

"Appellant has a legally protected right to amend her complaint to include new causes of action and identify newly discovered doe defendants according to proof. Cal. Code Civ. Proc. § 430.41(e)(1), (f)." Such conclusory argument is manifestly insufficient.

Hewlett's second argument, set forth in all of eight lines, is this: "The trial court reasoned in its order that Appellant's second amended complaint is an impermissible collateral attack in the conservatorship case. [Citation.] [¶] On the contrary, Appellant was merely accommodating Respondent's counsel Kelly Collins, Esq.'s directions that Appellant prepare a second amended complaint so that Mr. Collins, Esq. would defer filing a responsive pleading that amounts to a stipulation to its filing. CT 66, 68; [(] *Leader v. Health Industries of America* (2001) 89 Cal.App.4th 603, 606.[)]"

And it appears this second argument carries over to Hewlett's last argument, that her proposed SAC "therefore states cognizable claims," apparently for this reason: "Given that Respondent's counsel Kelly Collins, Esq. directed Appellant to prepare a [SAC] that amounted to a stipulation if Ms. Collins, Esq. is to be taken at her word, Appellant's [SAC] contains therefore many factual bases supporting relief. [Citation.]"

[8] The other two sub-arguments are that "California liberally allows amendment"; and "[d]ue process compels an end to crime including kidnapping and thievery in this case."

This is a misstatement of the record. As described above, attorney Collins did what she did because of the law that required a court order to allow a second amended complaint. It was hardly a stipulation.[9]

The trial court properly denied Hewlett's request for leave to file a SAC because it suffered from the same deficiencies as the FAC: it demonstrated the same standing issue as well as the same impermissible collateral attack on the orders in the conservatorship case. Hewlett failed to demonstrate that leave to file a SAC would cure the deficiencies of the FAC, and the trial court's denial of Hewlett's request for leave to file a Second Amended Complaint was correct. (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 374 ["[L]eave to amend should *not* be granted where . . . amendment would be futile"].)

DISPOSITION

The judgment is affirmed. The City shall recover its costs on appeal.

[9] Hewlett's Reply Brief goes even further, stating that she "filed a Second Amended Complaint at the request" of Collins, which "operated as a stipulation."

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Richman, J.

We concur:

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Kline, P. J.

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Miller, J.

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